



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 10, 1991

Robert E. Shaddock
General Counsel
State Department of Highways
and Public Transportation
11th & Brazos
Austin, Texas 78701-2483

OR91-637

Dear Mr. Shaddock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10613.

You inform us that the Department of Highways and Public Transportation received a request for materials submitted in relation to a determination of a business's certification as a "Disadvantaged Business Enterprise." Both you and counsel for the business concerned have objected to release of the information, citing exceptions to the Open Records Act. We have considered the exceptions you claimed, specifically 3(a)(1) and 3(a)(10), and have reviewed the documents at issue.

Section 3(a)(1) exempts from public disclosure information deemed confidential by law. Your objection to disclosure of financial information under section 3(a)(1) is based on decisions holding that the right of privacy encompassed by this section extends to financial information about an individual. However, almost all of the financial information in this case pertains to a corporation, and not to individuals. The right of privacy extends only to natural persons. See Open Records Decision No. 192 (1978), at 4 and cases cited therein; 59 TEX. JUR. 3d *Privacy* § 3 (1988). Financial information about the business, including its tax returns, cannot be withheld under this section. *Id.* The materials submitted to us also contain financial information concerning certain individuals, officers and employees of the corporation. The privacy protection encompassed by section

3(a)(1) extends to information that 1) is highly intimate or embarrassing, such that its disclosure would be highly offensive to a person of ordinary sensibilities; and 2) is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W. 2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The income tax returns of these individuals may be withheld under section 3(a)(1), as we do not perceive a legitimate public concern in the wide range of information contained therein. See Attorney General Opinion H-1274 (1978) at 3-4.

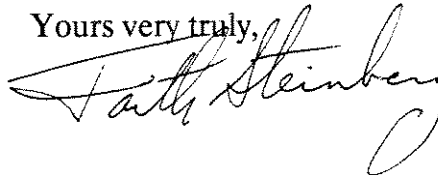
However, the materials also contain information about compensation these individuals received from the corporation and the extent of each person's stock holdings in the business. Ordinarily, the salary and stock ownership information would be considered private as "background" financial information, because it is not related to a transaction between the individual and the governmental body. See Open Records Decision No. 523 (1989) at 4-5. However, Open Records Decision No. 523 noted that in particular cases, there may be a legitimate public interest in knowing such background information. *Id.* Here the information about salaries and stock ownership indicates the extent of control or authority each officer or stock owner has in the business and is relevant to the determination of whether the business meets the requirements for certification as a Disadvantaged Business Enterprise. For this reason, we conclude that there is legitimate public concern in this information. We therefore find that section 3(a)(1) does not except these materials from disclosure.

You have also claimed that the documents requested may be withheld under section 3(a)(10) as commercial or financial information obtained from a person and privileged or confidential under law. In Open Records Decision No. 592 (1991), this office found that commercial or financial information may only be withheld under this section if it is protected from disclosure by law. The records at issue would thus be protected only to the extent that they contain trade secrets or other information required by law to be held confidential. *Id.* As you have not made the argument that this information includes trade secrets, and we are not aware of other law

making the information confidential, we have no basis for allowing an exception under 3(a)(10). *See* Open Records Decision No. 552 (1990) at 5.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-637.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/mc

Ref.: ID#s 10613, 10868

Enclosures: Open Records Decision Nos. 592, 552, 523, 192.

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¹The documents also contain information pertaining to an individual's medical condition. Although you did not claim an exception for this information, this office will raise and consider possible claims for exception under section 3(a)(1) on its own initiative. Under appropriate fact situations, medical information will be afforded section 3(a)(1) protection as being within common-law or constitutional privacy doctrine. However, in this case privacy protection would not apply, as it requires that the information be of no legitimate concern to the public (*see, e.g.,* Open Records Decision No. 579 (1990)). The medical information in this file pertains to a company's qualifications for participation in a government program and so is of legitimate public concern.